

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:11-CR-24-D

UNITED STATES OF AMERICA

v.

FAUSTO FONSECA, JR.,

Defendant.

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**ORDER**

On August 28, 2013, pursuant to a written plea agreement, Fausto Fonseca, Jr. ("Fonseca") pleaded guilty to possession with the intent to distribute a quantity of cocaine and a quantity of marijuana (count one), and possession of a firearm in furtherance of a drug trafficking offense (count two). See [D.E. 66, 68]. On August 28, 2013, the court held Fonseca's sentencing hearing. See [D.E. 69, 70]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report ("PSR"). See Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Fonseca's total offense level to be 26, his criminal history category to be IV, and his advisory guideline range on count one to be 92 to 115 months' imprisonment and on count two to be 60 months' consecutive imprisonment. See Resentencing Report. After granting the government's motion under U.S.S.G. § 5K1.1 and thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Fonseca to 30 months' imprisonment on count one and 60 months' consecutive imprisonment on count two. See id.; [D.E. 70]. Fonseca did not appeal.

On April 1, 2015, Fonseca moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782. See [D.E. 74]. Fonseca's new advisory guideline range on count one is 77 to 96 months' imprisonment, based on a total offense level of 24 and a criminal

history category of IV. See Resentencing Report. Fonseca requests a 25-month sentence on count one. See id.; [D.E. 74].

The court has discretion to reduce Fonseca's sentence on count one under Amendment 782. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Fonseca's sentence, the court finds that Fonseca engaged in serious criminal behavior, including possessing a sawed-off shotgun in furtherance of his drug trafficking. See PSR [D.E. 30] ¶¶ 7–9. Moreover, Fonseca is a recidivist drug dealer and has convictions for possession with intent to manufacture, sell, and deliver marijuana, possession with intent to sell and deliver marijuana, possession of cocaine (two counts), and possession with intent to sell and deliver cocaine. See id. ¶¶ 11–17. Fonseca also has a spotty work history. See id. ¶¶ 30–37. Nonetheless, Fonseca has taken some positive steps while incarcerated on his federal sentence. See Resentencing Report; cf. Pepper v. United States, 562 U.S. 476, 491 (2011).

Having reviewed the entire record and all relevant policy statements, the court finds that Fonseca received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a). Further reducing Fonseca's sentence would threaten public safety in light of his serious criminal conduct and serious criminal history. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Fonseca's motion for reduction of sentence under Amendment 782. See, e.g., Patterson,

671 F. App'x at 105–06; Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, the court DENIES Fonseca's motion for reduction of sentence [D.E. 74].

SO ORDERED. This 15 day of May 2018.

  
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JAMES C. DEVER III  
Chief United States District Judge